

### REMARKS

Applicant respectfully requests that the Examiner enter this Amendment After Final Action under 37 C.F.R. § 1.116 and reconsider the application as amended for allowance. Applicant respectfully submits that the above amendments place the claims in condition for allowance and/or in better condition for appeal. The following remarks are responsive to the Final Office Action mailed December 5, 2007.

#### Office Action Rejections Summary

Claims 43-55 have been rejected under 35 U.S.C. §102(b) as being allegedly anticipated by U.S. Patent No. 5,610,390 of Miyano ("Miyano").

Claims 43-47, 49-51, 53, 54, and 56 have been rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over U.S. Patent No. 6,518,640 of Suzuki et al. ("Suzuki") in view of Miyano.

Claims 48 and 52 have been rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Suzuki in view of Miyano, further in view of U.S. Patent No. 5,986,704 of Asai et al. ("Asai").

#### Status of Claims

Claims 44-45, 47-48, 51-52 and 57-64 are pending in the application. Claims 43, 46, 49-50 and 53-56 have been canceled, without prejudice, by this amendment. Claims 44-45, 47-48, 51-52 have been amended. Claims 57-64 have been added. It is submitted that the new claims are supported by the specification, for example, in pages 14-15 and Figure 16 of the application. Accordingly, it is submitted that no new matter has been added.

### Claim Rejections

Claims 43-55 have been rejected under 35 U.S.C. §102(b) as being allegedly anticipated by U.S. Patent No. 5,610,390 of Miyano ("Miyano"). Claims 43-47, 49-51, 53, 54, and 56 have been rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over U.S. Patent No. 6,518,640 of Suzuki et al. ("Suzuki") in view of Miyano. It is submitted that these rejections are moot because of the amendments filed in this response.

Claims 48 and 52 have been rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Suzuki in view of Miyano, further in view of U.S. Patent No. 5,986,704 of Asai et al. ("Asai"). It is submitted that claims 48 and 52 are patentable over the cited references.

The Office Action states:

Suzuki et al. in view of Miyano teach the imager in Claims 12, 24, 31, 37, 46, and 50, according to the appropriate paragraph above. Suzuki et al. also teach said layer of transmissive apertures is a layer of apertures (see Fig. 6, 8) such that the layer blocks (156) stray radiation and the apertures allow radiation to pass therethrough (see Fig. 6). Suzuki et al. do not teach the layer as a metal layer. Asai et al. teach (See Fig. 7A) a similar device with a layer of transmissive apertures (37a) as a metal layer of apertures (see Col. 1, lines 52-55) such that the metal layer blocks stray radiation (see Fig. 7A). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the layer as a metal layer as taught by Asai et al. in the imager of Suzuki et al. in view of Miyano, to provide efficient blockage and reflection of oblique light, and since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

(Final Office Action, 12/5/07, p. 12)

Applicant respectfully disagrees with the Office Action's assertions and submits that one of ordinary skill in the art would not be motivated to combine the cited

references in the purported manner to arrive at applicant's system recited in claim 48. More specifically, Asai teaches the use of non-planarized dielectrics underneath non-planarized metal (see cross sectional figures of Asai). The features of the non-planarized dielectrics are pinned (i.e., not shiftable) to the topography of materials (e.g., polysilicon gates) underneath them and the metal is pinned to the dielectric structure. Accordingly, the metal openings could not be significantly shifted, in order to be used as apertures in the imager of Suzuki as purported by the Office Action, without simultaneously changing the underlying polysilicon structure.

Furthermore, a lateral shift of a metal aperture (without regard to the planarity of the underlying dielectric) as shown in Asai would potentially result in a simultaneous variation in the height of the aperture above the silicon. Such would negate the equations cited in Suzuki for the lateral displacement. Accordingly, one of ordinary skill in the art would not be motivated to modify Suzuki with the metal layer of Asai because such would require a substantial reconstruction of the sensors in the cited references, as well as a change in the basic principles under which the cited reference sensor constructions were designed to operate. Thus, the teachings of the cited references are not sufficient to render claim 48 obvious. MPEP 2143.01.

Therefore, it is submitted that claim 48, and its dependent claims 44, 45, 47 and 57-60, are patentable over the cited references.

For reasons similar to those given above in regards to claim 48, it is submitted that claims 51-52 and 61-64 are patentable over the cited references.

In conclusion, applicants respectfully submit that in view of the arguments and amendments set forth herein, the applicable objections and rejections have been overcome.


If the Examiner believes a telephone interview would expedite the prosecution of this application, the Examiner is invited to contact Daniel Ovanezian at (408) 720-8300.

If there are any additional charges, please charge our Deposit Account No. 02-2666.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: 2/26, 2008

  
Daniel E. Ovanezian  
Registration No. 41,236

1279 Oakmead Parkway  
Sunnyvale, CA 94085-4040  
(408) 720-8300

**FIRST CLASS CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage in an envelope addressed to Mail Stop AF, Commissioner for Patents, PO Box 1450, Alexandria, Virginia 22313-1450.

on

2/26/08

Date of Deposit

JUANITA BRISCOE

Name of Person Mailing Correspondence

  
Signature

2/26/08

Date